



# THE ATTORNEY GENERAL OF TEXAS

AUSTIN 11, TEXAS

~~GEORGE SALLERS~~  
~~ATTORNEY GENERAL~~

Mrs. B. B. Sapp  
Director and Executive Secretary  
Teacher Retirement System  
Austin, Texas

Dear Mrs. Sapp:

Opinion No. O-6963  
Re: Disposition of Teacher  
Retirement Funds

We have your letter of December 3rd wherein you request the opinion of this department on the above captioned subject. Your letter reads in part as follows:

"Mr. A. N. McCallum was a member of the Teacher Retirement System and on the 17th day of November, 1943 made an application for retirement and chose Option 1, designating Mrs. Jane Yelvington McCallum his beneficiary. He stated in his application that his services in the public schools of Austin would terminate November 19, 1943.

"Mr. McCallum terminated his service in the Austin schools November 19, 1943 and died November 20, 1943.

"The Teacher Retirement Law provides in Section 5, Paragraph 6, 'Should a member die before retirement, the amount of his accumulated contributions standing to the credit of his individual account shall be paid as provided by the laws of descent and distribution of Texas unless he has directed the account to be paid otherwise.' Paragraph 7 of Section 5, provides, 'With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of death.'

"The Executive Secretary has ruled that McCallum died an active member and his beneficiary, Mrs. Jane Yelvington McCallum, is entitled to the amount of money standing to his credit, plus the interest it has earned to the date of his death. Is this the correct interpretation of the law?

". . . ."

Subsection 1 of Section 5 of Article 2922-1, Vernon's Annotated Revised Civil Statutes, relating to service retirement benefits provides in part as follows:

**"1. Service Retirement Benefits.**

"Any member may retire upon written application to the State Board of Trustees. Retirement shall be effective as of the end of the school year then current, provided that the said member at the time so specified for his retirement shall have attained the age of sixty (60) years and shall have completed twenty (20) or more years of creditable service, and provided further that no retirement shall be effective prior to August 31, 1941. Any member in service who has attained the age of seventy (70) years shall be retired forthwith, provided that with the approval of his employer he may remain in service. . . ."

The Teachers' Retirement System was established on July 1, 1937. The subject of your inquiry was at that time more than seventy years old. By the terms of the Act, he was subject to be retired on or after August 31, 1941, the date on which retirements became effective. He continued to teach subsequent to that time and such action is deemed to be with the approval of his employers.

On November 17, 1943, the deceased teacher member made application to retire, effective November 19, 1943, and his retirement would have been effective as of that date, under the provisions of subsection 1 of Section 5 of Article 2922-1, Vernon's Annotated Revised Civil Statutes, as amended, except that he exercised an option as provided by the Act at the time of his retirement and elected to receive a reduced membership annuity during his life and provide an annuity for his designated beneficiary after his death.

Subsection 7 of Section 5, relating to optional allowances for Service Retirement, provides in part as follows:

"With the provision that no optional selection shall be effective in case a beneficiary dies within thirty (30) days after retirement, and that such a beneficiary shall be considered as an active member at the time of death, until the first payment on account of any service benefit becomes normally due, any member may elect to receive his membership annuity in an annuity payable throughout life, or he may elect to receive the actuarial equivalent at that time, of his membership annuity in a reduced membership annuity payable throughout life with the provision that: (Underlining ours)

. . . .

The member having died within the 30-day period, must be considered as an active member at the time of his death and his beneficiary is entitled only to the return of

his accumulated contributions as provided by subsection 6 of Section 5 of Article 2922-1, Vernon's Annotated Revised Civil Statutes.

Very truly yours,

ATTORNEY GENERAL OF TEXAS

By Robert T. Donahue /s/  
Robert T. Donahue  
Assistant

By /s/ Jos. V. Franka  
Jos. V. Franka  
Assistant

RTD:JVF:vwb:jrb

approved Jan. 22, 1946  
/s/ Carlos C. Ashley  
FIRST ASSISTANT  
ATTORNEY GENERAL

APPROVED OPINION COMMITTEE  
BY E.B. Chairman